

Missouri

Health Care Stabilization Fund Feasibility Board



Report on 2009 Activities

I. Background of Review

In 2006, the Missouri General Assembly passed and the Governor signed House Bill 1837, which contained a number of medical malpractice insurance reforms. Included in the bill was a provision that became Section 383.250 of the Revised Statutes of Missouri. This provision established the Health Care Stabilization Fund Feasibility Board (“the HCSFFB” or “the Board”) within the Department of Insurance, Financial Institutions and Professional Registration (“DIFP”).

The creation of the Board represented a continuation of the activities of the Joint Interim Committee on a Missouri Health Care Stabilization Fund, created by the General Assembly in 2005. Section 383.250 reads, in part, as follows:

The primary duty of the board is to determine whether a health care stabilization fund should be established in Missouri to provide excess medical malpractice insurance coverage for health care providers. As part of its duties, the board shall develop a comprehensive study detailing whether a health care stabilization fund is feasible within Missouri, or specified geographic regions thereof, or whether a health care stabilization fund would be feasible for specific medical specialties. The board shall analyze medical malpractice insurance data collected by the department of insurance, financial institutions and professional registration under sections 383.105 and* 383.106 and any other data the board deems necessary to its mission. In addition to analyzing data collected from the Missouri medical malpractice insurance market, the board may study the experience of other states that have established health care stabilization funds or patient compensation funds. If a health care stabilization fund is determined to be feasible within Missouri, the report shall also recommend to the general assembly how the fund should be structured, designed, and funded. The report may contain any other recommendations relevant to the establishment of a health care stabilization fund, including but not limited to specific recommendations for any statutory or regulatory changes necessary for the establishment of a health care stabilization fund.

Generally speaking, a health care stabilization fund provides an “excess” layer of professional liability coverage for a health care provider over and above the coverage available from the provider’s primary insurance company. Typically funded by a surcharge on premiums or other types of fees imposed on providers, such a fund pays for a portion of a judgment or settlement that exceeds a specified dollar threshold. The amount below the threshold is covered by the provider’s primary insurance policy. Participation in a fund can either be voluntary or mandatory, depending on the specifics provisions of the state law in question. While some funds have a monetary cap per occurrence and an annual aggregate limit, others provide unlimited coverage for medical expenses.

II. Board Members

The Board consists of 10 members. Under Section 383.250, RSMo, the director of DIFP is a member and is authorized to appoint five other members of the Board. In addition, two members of the Senate are appointed by the President Pro Tem of the Senate, and two members of the House of Representatives were appointed by the Speaker of the House. The members of the Board for 2009 were:

1. Senator Bill Stouffer, Chairman
2. Senator Victor Callahan
3. Representative Rob Schaaf
4. Representative Curt Dougherty
5. John Stanley, MD, representing family physicians
6. Steve Reintjes, MD, representing medical doctors
7. Lancer Gates, DO, representing osteopathic doctors
8. Gloria Solis, RN MSN, MBA representing nurses
9. David Carpenter, representing Missouri hospitals
10. John M. Huff, Director of DIFP/or his designee

III. Board Meetings

The board met quarterly as required by law. The board meetings took place in January, April, June and November. The minutes of the meetings for this year and prior years can be accessed at <http://insurance.mo.gov/reports/hcsffb/index.htm>

IV. Focus of Review: Data

In prior years, the Board members discussed the information needed to determine if a health care stabilization fund would be beneficial to the medical malpractice market in Missouri. Before such things as costs, plan design, or efficacy of a fund were examined, the Board concluded it needed to determine whether the fund is even necessary. The Board's put its focus on three areas:

- Will a stabilization fund affect the number of doctors practicing in Missouri?
- What effects would a health care stabilization fund have on doctors and their practices?
- Will a fund provide stability to the availability and pricing of medical malpractice insurance?

The Board had hoped to shed light on these questions by analyzing premium, exposure and claim data collected by the DIFP under the revised provisions of Sections 383.105 and 383.106. After repeated attempts by DIFP to promulgate rules to implement these provisions, the Board decided to request that DIFP collect the data under whatever means was most appropriate. To that end, the staff of DIFP developed the attached Data Call to collect data under the Department's investigative authority under Section 374.190, RSMo. A draft of the Data Call was circulated for

comment among Missouri's Chapter 379 medical malpractice insurers and 383 medical malpractice mutual insurers on October 26, 2009. At its November 13, 2009 meeting, the Board reviewed comments and took testimony on the draft. At that meeting, the Board decided to expand the scope of the Data Call to include Missouri surplus lines medical malpractice insurers and Risk Retention Groups. On behalf of the Board, DIFP circulated a letter to said entities on December 4, 2009, requesting that the data be submitted by February 28, 2010. The text of the Data Call and related materials can be accessed at:

<http://insurance.mo.gov/private/medmalindex.ht>.